Supreme Court, U.S.
FILED

941534 MAR 16 1995

OFFICE OF THE CLERK

UNITED STATES SUPREME COURT
DOCKET NO.:

IN THE SUPREME COURT
OF THE
UNITED STATES
October 1994 Term

CLAUDIA R. DALL
Plaintiff-Respondent

VS.

GEORGINIA N. KAYLOR, LINDA BARON
and WESTPHALIAN PRIDE FARM
Defendants-Petitioners

PETITION FOR WRIT OF CERTIORARI TO THE VERMONT SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Alan F. Sylvester, Esq.
Counsel of Record
Sylvester & Maley, Inc.
P.O. Box 1053
Burlington, VT 05402-1053
(802) 864-5722

Amy E. Sylvester, Esq.
Sylvester & Maley, Inc.
P.O. Box 1053
Burlington, VT 05402-1053

36 pp

QUESTION PRESENTED FOR REVIEW

Whether the exercise of personal jurisdiction by the Vermont courts over the non-resident Defendants-Petitioners, whose only contact and connection with the State of Vermont was through the placement of classified advertisements in a nationally circulated publication, exceeds the limits imposed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

PARTIES

Plaintiff-Respondent:	Claudia R. Dall
Defendants-Petitioners:	Georgina N. Kaylor, Linda Baron and Westphalian Pride Farm[1]

[1]No parent companies or non-wholly owned subsidiaries exist.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

REPORTS OF OPINIONS iv

JURISDICTION OF THE
UNITED STATES SUPREME COURT iv

APPLICABLE CONSTITUTIONAL
AND STATUTORY AUTHORITY v

STATEMENT OF THE CASE 1

REASONS RELIED ON FOR
ALLOWANCE OF THE WRIT 4

APPENDIX A — Vermont Supreme Court, Docket No. 94-143, Opinion and Order dated February 17, 1995 6

APPENDIX B — Rutland Superior Court, Docket No. S0222-93 RcC, Opinion and Order dated January 19, 1994 . . . 22

TABLE OF AUTHORITIES

Case Law

Benjamin v. Western Boat Building Corp., 472 F.2d 723 (5th Cir.), cert. denied, 414 U.S. 830, 94 S.Ct. 60, 38 L.Ed. 2d 64 (1973) 4

Charia v. Cigarette Racing Team, Inc., 583 F.2d 184 (5th Cir. 1978) 4

Growden v. Ed Bowlin & Assoc., Inc., 733 F.2d 1149 (5th Cir. 1984) 4

Pickens v. Hess, 573 F.2d 380 (6th Cir. 1978) 4

Constitutional and Statutory Provisions

Title 12 Vermont Statutes Annotated Sec. 913(b) v

Title 28 U.S.C. Sec. 1257 iv

U.S. Const. amend. XIV. §1 v

REPORTS OF OPINIONS

1. Vermont Supreme Court, Docket No. 94-143, Opinion and Order dated February 17, 1995.

2. Rutland County Superior Court, Docket No. S0222-93 RcC, Opinion and Order dated January 19, 1994.

JURISDICTION OF THE UNITED STATES SUPREME COURT

Defendants-Petitioners seek review on Writ of Certiorari of a judgment of the Vermont Supreme Court entered on February 17, 1995.

Jurisdiction to review the judgment in question by Writ of Certiorari is conferred upon the United States Supreme Court by Title 28 U.S.C. Sec. 1257.

APPLICABLE CONSTITUTIONAL AND STATUTORY AUTHORITY

U.S. Const. amend. XIV. §1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 12 Vermont Statutes Annotated Sec. 913(b):

> Upon the service [of process on a party outside the state], and if it appears that the contact with the state by the party or the activity in the state by the party or the contact or activity imputable to him is sufficient to support a personal judgment against him, the same proceedings may be had for a personal judgment against him as if the process or pleading had been served on him in the state.

STATEMENT OF THE CASE

Vermont resident, Claudia R. Dall, brought suit in Rutland County Superior Court against Maryland residents, Georgina N. Kaylor, Linda Baron and Westphalian Pride Farm, for breach of warranty arising out of the purchase of a horse for use in dressage competition. In their responsive pleading, Defendants-Petitioners moved the lower court to dismiss the action on the ground that the nonresident Defendants-Petitioners did not have sufficient minimum contacts with the State of Vermont to confer jurisdiction upon the Vermont courts.

The transaction at issue arose after Plaintiff-Respondent read a classified advertisement for the sale of horses placed by Defendants-Petitioners in a publication distributed nationally, including within the State of Vermont.

Based on the stipulated facts, the trial court concluded that the nonresident Defendants' "contact with Vermont was fortuitous and alienated, not the result of an intentional act.... Defendants' activities were not of the quality and nature required to make it reasonable for them to conduct their defense in Vermont." Accordingly, the trial court granted Defendants' Motion to Dismiss for Lack of Personal Jurisdiction. (Opinion and Order, Appendix B, p. 28, 30.)

Plaintiff-Respondent appealed the trial court's dismissal of her action to the Vermont Supreme Court, a state court of last resort. In a 3-2 decision, the Vermont Supreme Court reversed the trial court's dismissal of the case. The majority found that "Defendants initiated the resulting business transaction by advertising, more than one hundred times, in a national market that included Vermont." (Opinion

and Order, majority, Appendix A, p. 12.) On that basis, the majority held that Defendants' advertising amounted to sufficient contacts with the State of Vermont to confer personal jurisdiction upon the Vermont courts.

Writing for the dissent, the Chief Justice noted:

> I fail to see how the placement of an advertisement in a national publication, without more, is an act purposefully directed at Vermont.... It should make no difference under the principles of Burger King, Hanson v. Denkla, and Asahi Metal Industry, Co. whether Defendants advertised once or hundreds of times. The majority opinion subjects one advertising a product in the national media to personal jurisdiction in this State regardless of the fact that there are no other Vermont contacts. This exercise of jurisdiction exceeds the limits imposed by the Due Process Clause of the Fourteenth Amendment.

(Opinion and Order, dissent, Appendix A, p. 20.)

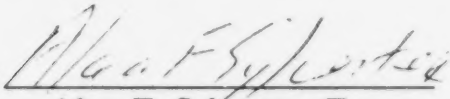
REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Defendants-Petitioners seek review on Writ of Certiorari because the 3-2 decision of the Vermont Supreme Court has decided a federal question in a way that conflicts with the decisions of several United States Courts of Appeals. In this regard, the following Circuit Courts of Appeals' decisions hold that a non-resident defendant's placement of classified advertisements in a nationally circulated publication is insufficient to establish minimum contacts with the forum state: Benjamin v. Western Boat Building Corp., 472 F.2d 723 (5th Cir.), cert. denied, 414 U.S. 830, 94 S.Ct. 60, 38 L.Ed. 2d 64 (1973); Charia v. Cigarette Racing Team, Inc., 583 F.2d 184 (5th Cir. 1978); Growden v. Ed Bowlin & Assoc., Inc., 733 F.2d 1149 (5th Cir. 1984); Pickens v. Hess, 573 F.2d 380 (6th Cir. 1978).

As further grounds for review on Writ of Certiorari, Defendants-Petitioners submit that the important question of personal jurisdiction in the context of minimum contacts through national advertising is an issue which has not been, but should be, settled by the United States Supreme Court.

Respectfully submitted at Burlington, Vermont, this 7th day of March, 1995.

GEORGINA N. KAYLOR,
LINDA BARON and
WESTPHALIAN PRIDE FARM
By: Sylvester & Maley, Inc.

By: 
Alan F. Sylvester, Esq.
Counsel of Record

Amy E. Sylvester, Esq.
Sylvester & Maley, Inc.
P.O. Box 1053
Burlington, VT 05403-1053
(802) 864-5722

APPENDIX A

Notice: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions, Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801 of any errors in order that corrections may be made before this opinion goes to press.

No. 94-143

Claudia R. Dall — Supreme Court

v. — On Appeal from Rutland Superior Court

Georgina N. Kaylor, et al. — November Term, 1994

David A. Jenkins, J.

Beth Robinson of Langrock Sperry & Wool, Middlebury, for plaintiff-appellant

Michael S. Brow and Amy E. Sylvester of Sylvester & Maley, Inc., Burlington, for defendants-appellees

Present: Allen, C.J., Gibson, Dooley, Morse and Johnson, JJ.

MORSE, J. Plaintiff Dall appeals the trial court's dismissal of her claim for lack of personal

jurisdiction. Dall, a Vermont resident, brought suit in Rutland Superior Court against Maryland defendants for breach of warranty arising from the purchase of a Hanoverian horse. Defendant Baron, a Maryland resident and owner of the horse, hired defendants Kaylor and Westphalian Pride Farm to sell it. Defendant Kaylor, d/b/a Westphalian Pride Farm, is a horse breeder and trainer in Maryland. Defendant Westphalian Pride Farm holds itself out as a breeder and developer of "world-class" Hanoverian horses. The sole issue is whether defendants' contacts with Vermont were sufficient to confer personal jurisdiction in Vermont. The trial court granted defendants' motion to dismiss for lack of jurisdiction. We reverse.

Dall read Westphalian Pride Farm's classified advertisement in a nationally circulated publication, Chronicle of the Horse. Westphalian Pride Farm had placed advertisements in Chronicle of the Horse over

a hundred times since 1990. In September 1992, Dall visited Westphalian Pride Farm in Maryland to view the horses available for sale. Upon her return to Vermont, she communicated with defendants by mail and telephone and ultimately agreed to purchase a horse. In October 1992, Dall mailed a check to defendants as payment for the horse. Defendant Kaylor mailed Dall the completed bill of sale for the horse, a transfer of ownership form and an application for membership in the American Hanoverian Society.

The horse sustained injuries during his trip to Vermont. A veterinarian's treatment of these injuries led to the discovery that the horse suffered from congenital and chronic bone disease in its rear legs.

Vermont's long-arm statute, 12 V.S.A. §913(b), confers jurisdiction over nonresident defendants to the full extent permitted by the Due Process Clause. Northern Aircraft, Inc. v. Reed, 154 Vt. 36, 40, 572

A.2d 1382 (1990); see also Reporter's Notes, V.R.C.P. 4(e) (statute allowing personal service outside state reaches to "outer limits permitted by the due process clause"). The Due Process Clause "protects an individual's liberty interest in not being subject to the binding judgments" of a foreign state with which the individual has no meaningful contacts. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985). A state court may assert jurisdiction and comport with due process where a nonresident defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). The critical consideration in determining if defendant's activities satisfy the minimum contacts requirement is whether "the defendant's conduct and

connection with the forum State are such that [the defendant] should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); Northern Aircraft, 154 Vt. at 41, 572 A.2d at 1386. This reasonableness requirement is met when the defendant purposefully directs activity toward residents of a forum state and the litigation arises out of, or relates to, that activity. Burger King, 471 U.S. at 472; Northern Aircraft, 154 Vt. at 41, 572 A.2d. at 1386. The reasonableness requirement also prevents a defendant from being subjected to jurisdiction on the basis of fortuitous, attenuated, or random contacts. Burger King, 471 U.S. at 475; Northern Aircraft, 154 Vt. at 41-42, 572 A.2d at _____.

Defendants argue that they did not affirmatively seek to do business with any Vermont resident by placing classified advertisements in a nationally

circulated publication and that placement of their ad did not establish minimum contacts with Vermont. They further argue that they did not purposefully direct activity toward Vermont during negotiations with Dall. Defendants rely, in part, upon Carothers v. Vogeler, 148 Vt. 316, 532 A.2d 580 (1987), in which this Court found insufficient contacts to confer jurisdiction. In Carothers, the Vermont defendant advertised his restored Porsche in a nationally circulated publication and subsequently sold it to the Ohio plaintiff who had seen the advertisement. The plaintiff obtained a judgment in Ohio. When the plaintiff sought to enforce that judgment in Vermont, we held that because defendant's sole contact with Ohio was the advertisement, defendant had not "avail[ed] himself of any benefit or law of Ohio." Id. Carothers, however, involved the private sale of an automobile by placement of a single advertisement in

a nationally circulated publication. The seller was not in the business of selling cars. Id. at 317, 532 A.2d at 580.

When, however, sellers intentionally act to advance their commercial interest, they should reasonably anticipate being sued in Vermont if a dispute arises from these activities. Northern Aircraft, 154 Vt. at 43, 572 A.2d at 1387. Unlike the defendant in Carothers, who did not regularly advertise and sell cars, defendants here were in the business of selling horses; they held themselves out as "breeder[s] and developers of world-class registered Hanoverians." Defendants initiated the resulting business transaction by advertising, more than one hundred times, in a national market that included Vermont.

It is hardly unfair for defendants to defend themselves in jurisdictions where they choose to advertise their products. See Makopoulos v. Walt

Disney World, 535 A.2d 26, 27-28 (N.J. Super. App. Div. 1987) (forum state claim resulting from New York television broadcast received in New Jersey was "not only to be anticipated, it was predictable"). As technology and economic practices diminish the importance of geographic boundaries, it is not unreasonable to anticipate the expansion of personal jurisdiction to those who deliberately transcend those boundaries in pursuit of economic gain. See id. at 28 (considering personal jurisdiction to be function of contemporary technology and economic practice).

We hold that assertion of personal jurisdiction over defendants will not offend "traditional notions of fair play and substantial justice." See Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 113 (1987) (requiring consideration of interests of forum state, plaintiff's interest in obtaining relief and burden on defendant). Vermont has a legitimate

interest in sanctioning "parties who reach out beyond one state and create continuing relationships and obligations" with Vermont citizens for the "consequences of their activities." Burger King, 471 U.S. at 473; see also Pasquale v. Genovese, 136 Vt. 417, 419, 392 A.2d 395, 397 (1978) (finding it "equitable to imply submission to jurisdiction" when defendant's conduct was "purposefully directed toward Vermont" and inevitably affected Vermont residents); Electronic Media Int'l v. Pioneer Communications of Am., Inc., 586 A.2d 1256, 1259 (Me. 1991) (affording redress against nonresidents who incur obligations to residents).

Defendants do not argue that Vermont is an inconvenient forum in which to try Dall's claim. It is not too great a burden to defend the breach of warranty claim here, and it may even be easier to litigate damages. See New Bern Pool & Supply Co. v.

Graubart, 381 S.E.2d 156, 160 (N.C. Ct. App. 1989) (assertion of jurisdiction convenient when potential witnesses available in forum state); see also Lebel v. Everglades Marina, Inc., 558 A.2d 1252, 1258 (N.J. 1989) (finding no burden on nonresident because interstate travel "not qualitatively that different" from travel within state). The horse's diseased condition was discovered in Vermont, and potential witnesses to the horse's condition and expenses incurred are likely to be in Vermont.

Reversed.

FOR THE COURT

James L. Morse
Associate Justice

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions, Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801 of any errors in order that corrections may be made before this opinion goes to press.

No. 94-143

Claudia R. Dall — Supreme Court

v. — On Appeal from Rutland Superior Court

Georgina N. Kaylor, et al. — November Term, 1994

David A. Jenkins, J.

Beth Robinson of Langrock Sperry & Wool, Middlebury, for plaintiff-appellant

Michael S. Brow and Amy E. Sylvester of Sylvester & Maley, Inc., Burlington, for defendants-appellees

Present: Allen, C.J., Gibson, Dooley, Morse and Johnson, JJ.

Allen, C.J., dissenting. The constitutional touchstone for personal jurisdiction is "whether the defendant purposefully established 'minimum contacts'

in the forum state." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (quoting International Shoe v. Washington, 326 U.S. 310, 316 (1945)). Burger King further instructs that the application of the minimum contacts rule "will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Id. at 475 (emphasis added).

The Court added, in language appropriate to the present facts:

> This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activities of another party or a third person.' Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that

> create a 'substantial connection' with the forum State. Thus where the defendant 'deliberately' has engaged in significant activities within a State, or has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Id. at 475-76 (emphasis in original; citations omitted).

I fail to see how the placement of an advertisement in a national publication, without more, is an act purposefully directed at Vermont. See Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 112 (1987) (O'Connor, J., plurality, joined by Rehnquist, C.J., Powell, Scalia, J.J.) (placement of product into stream of commerce without more is not an act of defendant purposefully directed toward forum state); see also Burger King, 471 U.S. at 476

(defendant's action must be purposefully directed at forum state or citizens of forum state); Worldwide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980) (mere foreseeability that defendant's product will be purchased by consumer in forum state insufficient for jurisdictional purposes). We said as much in Carothers v. Vogeler, 148 Vt. 316, 319, 532 A.2d 580, 582 (1987) (defendant did not avail himself of privileges of the state by advertising in national publication).

The majority attempts to distinguish Carothers on grounds that the present defendants advertised not just once, but "more than one hundred times" in a national publication, and that the circulation of this national publication included Vermont. We have consistently examined the quantity of activity within Vermont as a factor in determining whether the quality and nature of activity required to make it

reasonable for a defendant to conduct its defense in a foreign state. See id.; International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945). The frequency of an activity does not, however, alter the nature of that conduct or convert it into conduct deemed to be directed at the citizens or state of Vermont. As of today, national advertising, an activity not regarded by its nature as directed at the state, is deemed to be so because of the number of times it is repeated.

Defendants either availed themselves of the "benefits and protections" of Vermont's laws, or they did not. It should make no difference under the principles of Burger King, Hanson v. Denckla, and Asahi Metal Industry Co. whether defendants advertised once or a hundred times. The majority opinion subjects one advertising a product in the national media to personal jurisdiction in this state regardless of the fact that there are no other Vermont

contacts. This exercise of jurisdiction exceeds the limits imposed by the Due Process Clause of the Fourteenth Amendment.

I am authorized to say that Justice Dooley joins in this dissent.

Frederic W. Allen
Chief Justice

APPENDIX B

STATE OF VERMONT
RUTLAND COUNTY, SS.

CLAUDIA R. DALL
RUTLAND SUPERIOR COURT
DOCKET NO. S0222-93RcC

V.

GEORGINA N. KAYLOR,
LINDA BARON, AND WESTPHALIAN
PRIDE FARM

OPINION AND ORDER

Before the court is the defendants' Motion to Dismiss for Lack of Personal Jurisdiction, filed on June 1, 1993. The matter came on for hearing on September 24, 1993.

The facts which were established by a stipulation filed with the court are summarized as follows:

Plaintiff Claudia Dall is a resident of the State of Vermont. Defendant Georgina Kaylor, d/b/a

Westphalian Pride Farm, is a horse breeder in Poolesville, Maryland. Defendant Linda Baron is a horse breeder and a part owner of the subject horse, and she used Defendant Kaylor as her agent.

After reading an advertisement in Chronicle of the Horse, a nationally distributed publication in which defendants regularly advertised, the plaintiff visited Westphalian Pride Farm on two consecutive days in September of 1992 to inspect the horses which defendants had for sale.

Following plaintiff's visit to Westphalian Pride Farm, plaintiff and defendant communicated back and forth by telephone between Maryland and Vermont. During September, October, and November of 1992, plaintiff and defendants also communicated back and forth by mail between the two states. On approximately October 16, 1992, Daniel Evans, as agent for defendants, mailed a signed bill of sale

regarding a Hanoverian gelding (Eric) to plaintiff at her home in Vermont. On approximately October 20, 1992, plaintiff mailed a check in payment for Eric to defendants in Maryland. Between October 21, 1992 and October 23, 1992, defendant Kaylor wrote plaintiff a letter enclosing the completed bill of sale, among other items.

Defendants understood at the time they sold the horse to plaintiff that plaintiff intended to house and show the horse in Vermont. Defendants were also aware that the vehicle which picked up the horse at Westphalian Pride Farm was bound for Vermont (the vehicle was an independent carrier hired by plaintiff).

Although defendants sold a horse to one other Vermont resident, defendants have not visited the State of Vermont in respect to any horse related transactions, including the sale at issue. Defendants own no real property in Vermont and have no bank

accounts in Vermont. Defendant Linda Baron has no interest in Westphalian Pride Farm; Westphalian Pride Farm acted as Linda Baron's agent in the transaction at issue. The transaction at issue was not a cash-on-delivery sale.

The issue is whether this court has personal jurisdiction over the nonresident defendants. Vermont's long arm statutes, 12 V.S.A. §§ 855 and 913(b), confer jurisdiction over nonresident defendants to the full extent permitted by the due process clause of the United States Constitution. Northern Aircraft, Inc. v. Reed, 154 Vt. 36, 40 (1990). The due process inquiry involves a determination of whether the nonresident defendants have sufficient minimum contacts with the State such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." International Shoe Co. v.

Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

In order for the nonresident defendant to have sufficient minimum contacts with the forum state, the "minimum contacts must have a basis in some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985). The due process inquiry further requires that "the defendant's conduct and connection within the forum state are such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292-94 (1980).

In the case at bar, the defendants do not have the requisite minimum contacts with Vermont. All of the substantial contracts pertaining to the sale and

delivery of the horse occurred in Maryland. Plaintiff traveled to Maryland to inspect the horses which defendants had for sale. Plaintiff also arranged for and paid an independent carrier to pick up the horse she purchased in Maryland and transport it to Vermont. Defendants never traveled to Vermont; their only contact with this State was by telephone and mail.

Although the Vermont Supreme Court has found that a defendant whose only contacts with Vermont were by telephone and mail could be haled into court under certain circumstances, Northern Aircraft v. Reed, 154 Vt. 36 (1990), such circumstances do not exist in the case at hand. Defendants whose only contacts with a State are by telephone and mail must have "purposefully direct[ed] [their] activities toward forum residents" in order to be subject to the personal jurisdiction of a Vermont court. Id. at 41.

Plaintiff argues that defendants purposefully directed their activities toward Vermont by advertising in Chronicle of the Horse, a nationally distributed publication. However, defendants did not purposefully avail themselves of any benefit or law of Vermont merely by advertising in a nationally circulated publication. See Carothers v. Vogeler, 148 Vt. 316, 319 (1987) (merely by advertising in the nationally circulated 356 Registry, defendant did not avail himself of any benefit or law of Ohio). Rather, the defendants' contact with Vermont was fortuitous and alienated, not the result of an intentional act.

Plaintiff also argues that any sort of active and intentional participation in the Vermont market, either through direct shipment or by transmittal through regular distributors serving the area, is sufficient to bring a foreign defendant within the jurisdiction of Vermont courts, citing Bard Bldg. Supply Co., Inc. v.

United Foam Corp., 137 Vt. 125, 129 (1979). In Bard, the Court held that where a Pennsylvania business received an unsolicited order for its product from a Vermont resident, and then accepted the order and shipped the goods in question C.O.D. to the Vermont customer, that business had established sufficient contacts with Vermont to confer jurisdiction upon Vermont courts with respect to issues stemming from that transaction. Id. Bard is inapplicable to the instant case because it is factually distinguishable. Defendants in this case did not ship the horse to Vermont; plaintiff arranged for and paid an independent carrier to transport the horse from Maryland to Vermont. Additionally, the transaction at issue was not a C.O.D. sale.

Based upon the foregoing, the court concludes that the defendants do not have minimum contacts with Vermont to confer jurisdiction upon Vermont

courts. Defendants' activities were not of the quality and nature required to make it reasonable for them to conduct their defense in Vermont. Therefore, the court **GRANTS** the defendants' Motion to Dismiss for lack of jurisdiction.

Dated at City of Rutland, County of Rutland, State of Vermont this 19th day of January 1994.

_____

David A. Jenkins
Superior Judge